

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

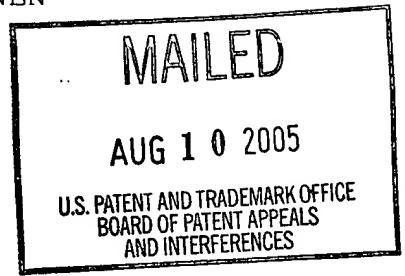
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte FRANCISCUS PETRUS MARIA MERCX, JOHANNES GERARDUS HENRICUS WILLEMS, HARRY VAN BAAL and ERIK VAN LOENEN

Appeal No. 2005-0705  
Application No. 09/966,351

ON BRIEF



Before GARRIS, DELMENDO and PAWLIKOWSKI, Administrative Patent Judges.

GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal which involves claims 1, 3, 4 and 6-11.

The subject matter on appeal relates to a metallized molded resin article consisting essentially of a resin composition, a non-blooming polymeric release agent/lubricant such as

polyethylene, which is non-blooming when the metallized molded resin article is subject to aging at temperature of 100-185°C, and a metallizing layer disposed on a portion of the surface of the article. This appealed subject matter is adequately represented by independent claim 1 which reads as follows:

1. A metallized molded resin article, consisting essentially of

- a) 70 to about 99.9 weight percent, based on the total weight of the resin compositions, of a crystallizable polyester resin derived from aliphatic or cycloaliphatic diols, or mixtures thereof, containing 2 to 10 carbon atoms and at least one aromatic dicarboxylic acid wherein the aromatic group is a C6 or C20 aryl radical
- b) a non-blooming polymeric release agent/lubricant composed of olefinic monomeric units, wherein said release agent/lubricant is non-blooming when the metallized molded resin article is subject to aging at temperature of 150-185 degrees Centigrade,
- c) optionally, from 0 to about 20 percent by weight nucleants and/or fillers,
- d) less than 5% by weight additional ingredients based on the total weight of the resin composition, and
- e) a metallizing layer disposed on a portion of the surface of said article.

The references set forth below have been applied by the examiner in the Section 103 rejections before us:<sup>1</sup>

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<sup>1</sup>In the "**Response to Argument**" section of the answer, the examiner has referred to Zeilstra patent no. 4,283,314 in support of his obviousness position. The Zeilstra patent is not included

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Cohen	4,185,047	Jan. 22, 1980
Breitenfellner et al. (Breitenfellner)	4,623,562	Nov. 18, 1986
Weaver et al. (Weaver)	4,699,942	Oct. 13, 1987

All of the claims on appeal are rejected under 35 U.S.C. § 103(a) as being unpatentable over Breitenfellner in view of Cohen or Weaver.<sup>2</sup>

We refer to the brief and reply brief and to the answer for an exposition of the opposing viewpoints expressed by the appellants and by the examiner concerning these rejections.

#### OPINION

For the reasons set forth below, we will sustain each of the rejections before us on this appeal.

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in the examiner's statement of rejection for either of the Section 103 rejections advanced on this appeal. It is well settled that, where a reference is relied on to support a rejection, whether or not in a minor capacity, that reference should be positively included in the statement of the rejection. See In re Hoch, 428 F.2d 1341, 1342 n.3, 166 USPQ 406, 407 n.3 (CCPA 1970). Also see the Manual of Patenting Examining Procedure (MPEP) § 706.02(j) and Section 2144.08 (Revision 2, May 2004). As a consequence, we will not consider or further comment upon the Zeilstra patent or the examiner's discussion thereof in his answer.

<sup>2</sup>In the context of the above noted rejections, the claims have not been separately grouped or argued. Therefore, we will focus on claim 1, the only independent claim on appeal, in assessing the merits of these rejections. See In re Young, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991).

Breitenfellner discloses all aspects of representative appealed claim 1 except for the claim requirement concerning a non-blooming polymeric release agent/lubricant. Breitenfellner teaches that his molding compositions may include a mold release agent (see lines 27-30 in column 3) but does not disclose any specific mold release agents. However, each of the Cohen and Weaver references expressly teaches mold release agents such as polyethylene for resin molding compositions of the type used by Breitenfellner and claimed by the appellants (e.g., see the paragraph bridging columns 3 and 4 of Cohen and lines 15-21 in column 3 of Weaver).

In light of these prior art teachings, it would have been obvious for one having an ordinary level of skill in this art to provide the molding composition of Breitenfellner with a mold release agent such as polyethylene pursuant to the teachings of Cohen or Weaver. In this way, Breitenfellner's aforementioned disclosure of providing his molding compositions with non-specified mold release agents generally would have been effectuated via a specific mold release agent such as polyethylene taught by Cohen or Weaver as being effective for molding compositions of the type under consideration. Thus, this provision would have been motivated by the desire to obtain a

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mold release function based upon a reasonable expectation that, for example, polyethylene would successfully provide this function in the context of the Breitenfellner molding composition. See In re O'Farrell, 853 F.2d 894, 903, 7 USPQ2d 1673, 1680-81 (Fed. Cir. 1988).

To the extent the appellants argue the applied references do not establish a prima facie case of obviousness, this argument is unpersuasive for the reasons detailed above. On page 7 of the brief, the appellants contend that their specification contains evidence of nonobviousness in the form of unexpected results. Although this evidence has not been identified or discussed by the appellants with any reasonable specificity, it appears to constitute the comparative data on specification pages 11-12 wherein certain of the appellants' claimed mold release agents are shown to be superior compared with other mold release agents. The deficiency of this evidence is immediately apparent from even a casual review.

Specifically, the comparison on specification pages 11-12 involves only two of the appellants' inventive mold release agents, namely, polyethylene and ethylene ethyl acrylate. The independent claim on appeal is not even remotely limited to such a small number of release agents. Instead, this claim

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encompasses all polymeric release agents composed of olefinic monomeric units that possess the non-blooming characteristic recited in this claim. In this regard, appealed independent claim 1 is considerably broader in scope than the specification evidence proffered by the appellants.

It is appropriate to remind the appellants that evidence presented to rebut a prima facie case of obviousness must be commensurate in scope with the claims to which it pertains and that evidence which is considerably more narrow in scope than the claimed subject matter is not sufficient to rebut such a prima facie case. See In re Dill, 604 F.2d 1356, 1361, 202 USPQ 805, 808 (CCPA 1979). Because the evidence before us indeed is considerably more narrow in scope than independent claim 1, it is our ultimate determination that the applied reference evidence of obviousness outweighs the appellants' specification evidence of nonobviousness. We hereby sustain, therefore, the rejection of all appealed claims as being unpatentable over Breitenfellner in view of Cohen or Weaver.

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The decision of the examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv).

AFFIRMED

*Bradley R. Garris*  
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Administrative Patent Judge )  
*Romulo H. Delmendo* )  
ROMULO H. DELMENDO )  
Administrative Patent Judge )  
*Beverly A. Pawlikowski* )  
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